

REMARKS

Reconsideration and allowance of the present application in view of the following remarks are respectfully requested.

Applicant has carefully considered the Final Office Action of June 12, 2006, and the references cited therein. In the Final Office Action, claims 1-3, 5, 6, and 8-16 were once again rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhao et al (U.S.P. 6,514,602) in view of Grenier (U.S.P. 5,613,964).

Each of the presently pending claims requires the water vapor transmission rate of the backsheet to be at least about 20% of the water vapor transmission rate of the cover sheet.

In response to Applicants' previous arguments of March 20, 2006, Ferguson et al was cited to support the position that "it is known in the art that the backsheet and coversheet can be structured the same and perform different functions where liquids are concerned." Further, while it was acknowledged that Zhao et al fails to disclose 1) a backsheet water vapor transmission rate (WVTR) that is at least about 20% of a WVTR of the coversheet, and 2) a contact angle mismatch of less than about 25%, it was nonetheless stated that such results are inherent in the description of Zhao et al. However, it is respectfully submitted that Zhao et al simply fails to provide any WVTR data for topsheets and also does not provide any suggestion or disclosure for what contact angle mismatch would be present. Ferguson et al does not remedy these shortcomings. As such, the present claims patentably define over Zhao et al.

The Final Office Action cites column 23, lines 35-40 of Zhao et al for the assertion that the backsheet and coversheet can be structured the same. However, column 23, lines 35-40 states only that (emphasis added):

Films prepared according to Examples 7 to 9 can be used as backsheets for disposable absorbent products such as absorbent interlabial pads **or as apertured formed** filmed (sic) **topsheets** for such products.

This citation supports Applicants' contention that only after being **apertured** does Zhao et al recommend using its inventive films as coversheets (a.k.a. topsheets). Zhao et al fails to provide any WVTR data for any of these apertured film materials or for any of the other materials said to be suitable for topsheets. Nor does Zhao et al give any indication of a concern for the WVTR of topsheets relative to backsheets, much less a requirement as in claims 1, 12 and 14 noted above.

The films described in Zhao et al primarily pertain to the backsheets. Moreover, Zhao et al only discloses use of such films as topsheets when those films are **apertured**. When the films are apertured, the WVTR will change drastically. There is no disclosure of what the WVTR of the apertured films would be. Thus, there is no way to compare the WVTR of the unapertured films (backsheets) in Zhao et al with the apertured films (topsheets). Zhao et al fails to give any indication of a concern for the WVTR of topsheets relative to backsheets, much less any specific requirement as in claims 1, 12 and 14 noted above. Accordingly, Zhao et al fails to suggest or disclose the relative water vapor transmission rate feature of Applicants' claims 1, 12 and 14.

In addition, claim 1 requires the cover sheet and the back sheet to have a contact angle mismatch of less than about 25%. Because the topsheet is water permeable and the backsheet is liquid impervious, the topsheet cannot be formed of

the same film as forms the backsheet. A water permeable structure like the topsheet will have a very different contact angle than the contact angle of a liquid impervious structure such as a backsheet. Zhao et al fails to provide any data about the contact angle of any of the materials that Zhao et al suggests as suitable for a topsheet, whether apertured film or otherwise, and the presently pending claims patentably define over Zhao et al.

Despite the fact that Zhao et al fails to provide any suggestion or disclosure regarding the WVTR of the backsheet and coversheet and the contact angle mismatch, the Final Office Action nonetheless asserts that such limitations would be “inherent” in the teachings of Zhao et al. Specifically, the Office Action suggests that the basis for the inherency rejection is that the “article of Zhao comprises the same structure and materials disclosed in the instant specification.” However, only after being **apertured** does Zhao et al recommend using its inventive films as topsheets. As such, the claimed WVTR of the backsheet and coversheet and the contact angle mismatch would be not inherent in the teachings of Zhao et al.

To properly maintain an inherency rejection, the missing limitation must be “necessarily present” within the teachings of the cited reference. In this case, Applicants respectfully submit that the WVTR of the backsheet and coversheet and the contact angle mismatch is not necessarily present in the cited references. In particular, as described in detail above, Zhao et al only discloses the use of backsheet films as topsheets when those films are **apertured**. Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.”


MPEP § 2163.07(a). As such, it is respectfully submitted that the presently pending claims patentably define over Zhao et al.

Applicants respectfully request reconsideration and reexamination of claims 1-3, 5, 6, and 8-16, as presented herein, and submit that these claims are in condition for allowance and should be passed to issue.

If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted herewith.

Respectfully submitted,

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 9/12/2006

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